



An Coiste um Achomhairc
Foraoiseachta
Forestry Appeals Committee

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24 April, 2020

Subject: Appeal FAC323/2019 TFL00354019 – Felling licence

Lissannymore, Cavan

Dear [REDACTED]

I refer to the appeal to the Forestry Appeals Committee (FAC) in relation to the above licence issued by the Minister for Agriculture, Food and the Marine. The FAC established in accordance with Section 14 A (1) of the Agriculture Appeals Act 2001 has now completed an examination of the facts and evidence provided by all parties to the appeal.

Background

Felling Licence TFL00354019 for 3.88 hectares was approved by the Department of Agriculture, Food and the Marine on 18th October, 2019.

Hearing

A hearing was conducted by the FAC on the 16th April, 2020.

In attendance at the hearing:

FAC Members: Mr. Des Johnson (Chairperson), Mr. Pat Coman, Ms. Mary Lawlor
& Mr Vincent Upton

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Forestry Appeals Committee

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Decision

Having regard to the evidence, before it and, in particular, the considerations and reasoning set out below, the FAC has decided to confirm the decision of the Minister regarding licence TFL00354019.

The decision is related to 3.88 hectares of felling and replanting at Lissannymore, Cavan

The appellant provided the following grounds of appeal

Based on the information supplied it is not possible to make a decision which would be in compliance with the requirements of the Habitats and EIA directives, and having regard to the following judgements of the CJEU;

Case C-258/11, Peter Sweetman and Others v An Bord Pleanala

Case C-164/17, Ede] Grace and Peter Sweetman v An Bord Pleanala

Case C-323/17 People Over Wind and Peter Sweetman v Coillte Teoranta

Case C-461/17 Brian Holohan and Others v An Bord Pleanala

The test for Appropriate Assessment Screening in Irish law is as set out by "Finlay Geoghegan J. in; Kelly -v- An Bord Pleanala [2014] IEHC 400 (25 July 2014)

"There is no need to establish such an effect; it is, as Ireland observes, merely necessary to determine that there maybe such an effect."

The Department of Agriculture, Food & the Marine (DAFM) stated they had undertaken an appropriate assessment screening under the Habitats Directive following their procedures and that the project had been screened out for appropriate assessment. The potential for the proposed project to contribute to an in-combination impact on European sites was considered by the DAFM. The following online planning systems were consulted, focusing on the area of the Townland(s) containing the project (i.e. Lissannymore, Cavan):-Cavan County Council, An Bord Pleanala and the EPA website. The DAFM concluded that individually, the project does not represent a source, or if so, no pathway for an adverse effect on any European site exists. Consequently, it deemed that there is no potential for the project to contribute to any such effects, when considered in-combination with other plans and projects.

Before making its decision the FAC carried out a Stage 1 screening in accordance with the provisions of the Habitats Directive and examined the project from the perspective of the EIA Directive, these assessments are available on the public file. There are 4 European sites within 15kms of the proposed site, notably River Boyne & River Blackwater SAC, Killyconny Bog (Cloughbally) SAC, River Boyne & River Blackwater SPA and Lough Sheelin SPA. The site comprises of a small area of 3.88ha of felling and reforestation spread out across an area of existing forest and agricultural land due to be thinned in 2020 and clearfelled in 2027.

The proposal covers a small area and only two felling coupes are adjacent to a stream, thus the potential for any sediment or runoff from the proposal is very limited. This stream joins the Blackwater and enters Lough Ramor, which would provide considerable dilution and settling were any sediment to leave the site, before joining the River Boyne and River Blackwater SAC and SPA. The hydrological distance from the felling site through Lough Ramor and to the SAC and SPA is some 13km. There are very few other mature forests in the vicinity or other possible sources. Lough Sheelin SPA lies at a considerable distance from the forest and in a separate catchment with no hydrological connection to the site. In relation to both SPAs, their boundaries lie beyond the typically foraging range of species for which they are designated and coniferous woodland would not be considered important habitat for these species in any case. Killyconny Bog SAC lies some 13 km southeast of the site. A tributary of the Blackwater flows from Killyconny Bog and joins the river below Lough Ramor and is at a considerable separation from the forest.

Having regard to the nature and scale of the proposed development, the existing pattern of development in the area together with identified permitted projects, separation distances to the European sites and the absence of hydrological connectivity, the FAC concluded that the proposed development by itself, or in combination with other projects and land uses in the area, would not result in the possibility of a significant effect on a European sites, having regard to the conservation objectives for those sites.

The FAC considered that none of the conditions attached to the licence require measures which are designed to avoid or reduce effects on a European site, in this instance. The FAC also concluded that the proposal of felling and replanting did not fall within a class of development covered by the EIA Directive and that, in any case, based on the nature, scale and location of the proposal it would not result in any real likelihood of a having a significant effect on the environment.

Before making its decision, the FAC considered all of the information submitted with the application, the processing of the application by the DAFM including its screening for Appropriate Assessment, the grounds of appeal and submissions and observations received.

Yours sincerely



Pat Coman on behalf of the Forestry Appeals Committee

Appropriate Assessment Screening

The felling licence pertains to a number of coupes spread out across an area of existing forest and agricultural land due to be thinned in 2020 and clearfelled in 2027. In total the area is 3.88 ha. The stands are composed of Norway and Sitka spruce and some ash and will be replanted with Sitka spruce and broadleaves. Two coupes are adjacent to a small stream that runs southeasterly before joining the River Blackwater and flowing south to Virginia where it enters Lough Ramor on the northern side. There are a small number of other forests in the area and felling licences and afforestation licences have been granted in the townland. There are four European sites within 15km of the site that are listed below alongside their qualifying interests and direct distances to the felling site.

The River Blackwater flows from the southerly edge of Lough Ramor and a boundary of the River Boyne and River Blackwater SAC and SPA starts at this point. The proposal covers a small area and only two felling coupes are adjacent to a stream, thus the potential for any sediment or runoff from the proposal is very limited. This stream joins the Blackwater and enters Lough Ramor, which would provide considerable dilution and settling were any sediment to leave the site, before joining the SAC and SPA. The hydrological distance from the felling site through Lough Ramor and to the SAC and SPA is some 13km. There are very few other mature forests in the vicinity or other possible sources. Lough Sheelin SPA lies at a considerable distance from the forest and in a separate catchment with no hydrological connection to the site. In relation to both SPAs, their boundaries lie beyond the typically foraging range of species for which they are designated and coniferous woodland would not be considered important habitat for these species in any case. Killyconny Bog SAC lies some 13 km southeasterly. While a tributary of the Blackwater flows from Killyconny Bog it joins the river below Lough Ramor and is at a considerable separation from the forest. The licence issued by the DAFM contains a number of conditions of a general nature that do not pertain to the mitigation of effects on a European site. The FAC concluded that the felling and replanting, in combination with other plans or projects, would not result in the possibility of a significant effect on a European site.

Site Type	Site Code	Site Name	Distance To (m)	Qualifying Interests (* denotes a priority habitat)
SAC	2299	River Boyne and River Blackwater SAC	10791.29	Habitats 7230 Alkaline fens 91E0 Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (Alno-Padion, Alnion incanae, Salicion albae)* Species 1106 Salmon (<i>Salmo salar</i>) 1355 Otter (<i>Lutra lutra</i>)

				1099 River Lamprey (<i>Lampetra fluviatilis</i>)
SAC	6	Killyconny Bog (Cloghbally) SAC	13115.97	Habitats 7110 Active raised bogs* 7120 Degraded raised bogs still capable of natural regeneration
SPA	4232	River Boyne and River Blackwater SPA	10785.37	Birds A229 Kingfisher (<i>Alcedo atthis</i>)
SPA	4065	Lough Sheelin SPA	14376.97	Birds A067 Goldeneye (<i>Bucephala clangula</i>) A061 Tufted Duck (<i>Aythya fuligula</i>) A059 Pochard (<i>Aythya ferina</i>) A005 Great Crested Grebe (<i>Podiceps cristatus</i>) Habitats Wetlands

Environmental Impact Assessment (EIA) Examination

The licence pertains to the felling and replanting of an area of mature forest and does not involve afforestation or deforestation for the purposes of land use change. The proposal is not considered to constitute a class of development included in the Annexes of the EIA Directive. The proposal is of a small scale and situated in a rural, agricultural area with a small number of other mature forests in the vicinity. The FAC concluded that the proposal would not lead to the possibility of a significant effect on a European site. The licence includes conditions that would provide some protection to the environment generally. The FAC concluded that the proposal is not likely to result in a significant effect on the environment and the submission of an EIA report or a formal screening is not required.

Vincent Upton on behalf of the FAC